

***United States Court of Appeals  
for the Second Circuit***

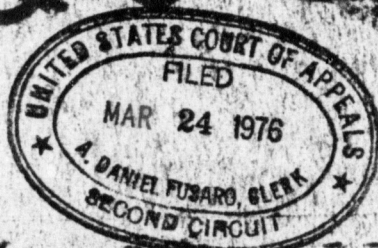


**APPELLANT'S  
BRIEF**



Aug 20.75

75-7252



Conrad W. Nash

CASE 74-477

VS.

75-7252

Secretary of Department of  
Health, Education and Welfare  
of the United States

B

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ANDRE DASH  
939 KENT AVE  
BROOKLYN NY 11205

W. B. RICHMOND JR. ATTORNEY

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

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HONORABLE JOHN F. DOULING JR.  
UNITED STATES COURT HOUSE 225 BROADMAN PLAZA EAST  
BROOKLYN NY 11201

YOUR HONOR IN REFERENCE TO CIVIL ACTION NUMBER 786477 I AM SUBMITTING  
THIS BRIEF IN MY BEHALF AS YOU KNOW I COULD NOT GET A LAWYER TO  
REPRESENT ME SO THEREFORE I HAVE HAD THROUGHOUT THESE PROCEEDINGS  
NO LEGAL REPRESENTATION FULLY REPRESENTING MY PHYSICAL AND MENTAL  
IMPAIRMENT CONCERNING THE FACTS INVOLVED BY MY DISABILITY WHICH  
HAS IMPAIRED ME FROM BEING SUBSTANTIALLY OR GAINFULLY EMPLOYED  
SINCE BEING MEDICALLY RETIRED FROM THE NEW YORK CITY FIRE DEPARTMENT  
IF I MAY AT THIS TIME REFER TO THE HEARING FILE MA-54 OF 9-22  
APPLICATION FOR DISABILITY FILED AS EXHIBIT ONE AUGUST 20 1971  
WAS MADE OUT BY A CLERK AT THE SOCIAL SECURITY OFFICE ON THE QUESTION  
NUMBER 4 I WAS TOLD BY HER SHE COULD NOT PUT ANOTHER DOWN ON THE  
APPLICATION BECAUSE I WAS WALKING AROUND AND I SEEMED TO BE PHYSICALLY  
FIT TO HER AND SHE ASKED ME WHAT WAS I BEING TREATED FOR AT THAT  
TIME I TOLD HER ANXIETY NEUROSIS ITEM NUMBER 15 I TOLD HER I WAS  
DISABLED SHE TOLD ME I WAS NOT BECAUSE I WAS STILL WORKING BUT  
I WAS WORKING AT LIMITED SERVICES AT THAT TIME IN THE FIRE DEPARTMENT  
I REMAINED FOR A YEAR APPROXIMATELY UNTIL THEY RETIRED ME IN SEPTEMBER  
1971 QUESTION 14-15 WAS ALSO INCORRECT I AM GOING TO EXIP THE TAPE  
RECORDING AT THE ORAL HEARING BECAUSE HEARING THOSE TAPES MADE  
ME SOMEWHAT DISGUSTED WITH MYSELF AND THE HEARING PROCEDURE THE TAPE  
SOUNDED LIKE THE TAPER NIXON WAS FULL OF DELETES AND SOME PARTS  
INAUDIBLE AND INCONSISTENT I WOULD LIKE TO REFER TO SOME DECISIONS  
THAT WERE SUBMITTED BY MR. BARKERTON AND THEN I LISTED ON MY PAPER  
AS EXHIBITS 177 LUCILE O. TADDEO VS. ELLIOTT T. RICHARDSON THE NEXT  
EXHIBIT WOULD BE 178 MEMORANDUM OPINION BY DISTRICT JUDGE TROUSON  
AND THE NEXT EXHIBIT 349 BAKER VS. RICHARDSON NEXT EXHIBIT 350  
ORDER AND THE NEXT EXHIBIT 374 THROUGH 7 STONE VS. FINCH I AM CLAIMING  
MY DISABILITY AS OF SEPTEMBER 2 1971 UNTIL PRESENT OR ABLE TO OBTAIN  
SUBSTANTIAL GAINFUL ACTIVITY I AM NOT AS UNSTABLE NOW AS I WAS  
FROM SEPTEMBER 1971 UNTIL LATE 1973 I WAS GOING THROUGH EMOTIONAL  
CHANGES BASED ON DIVORCE FROM MY FIRST WIFE AND THE PROBLEM OF  
REHARRIING AND HAVING ADDITIONAL CHILDREN WHEN I WAS RETIRED I  
WAS IN SUCH A STATE OF CONFUSION AS NOT TO BE ABLE TO HANDLE MY  
PERSONAL AFFAIRS SUCH AS TRYING TO OBTAIN A 576 PENSION FROM THE

REPLY BY MAILGRAM - SEE REVERSE SIDE FOR WESTERN UNION 3 TOLL FREE PHONE NUMBERS



THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

FIRE DEPARTMENT BASED ON THEIR HEART BELL AND AT HOME AND OTHER RELATED RESPONSIBILITIES I NEVER LEFT THE HOUSE ALONE OR DROVE ALONE OR HAVE TAKEN THE BUS OR TRAIN WITHOUT A COMPANION. FROM N.E.W. UNDER SECTION 42 U.S.C. 415 AND OTHER SECTIONS REGARDING DISABILITY THEY USED THE WORD ANATOMICAL WHICH MEANS BODY IN SCOPE AND IN MY CASE I WILL RELATE THE WORD TO MEAN ORGANS LIKE SUSTAINING ORGANS OR THAT PART OF THE BODY THAT IF DISEASED OR IMPAIRED CAN INCAPACITATE ONE GAINFUL ACTIVITY. MANY AMERICANS OF MY AGE SO WORLD WAR TWO VETS AND POOR AND BLACK HAD TO WORK THEIR WAY UP THE ECONOMIC LADDER SOME FINISHED COLLEGE SOME BECAME PROFESSIONALS SOME JUST MIDDLE CLASS WORKERS MANY OF US PAY SOCIAL SECURITY WHICH IS A FORM OF INSURANCE WHICH AFFORDS US A PENSION FOR RETIREMENT OR DISABILITY PENSION MANY BLACKS OR MINORITIES DON'T HAVE THE LIFE EXPECTANCY TO RETIRE ON PENSIONS AND BECAUSE OF THEIR WORK AND LIVING STANDARDS THEY MAY BECOME IMPAIRED AND NEED DISABILITY BEFORE REACHING THE RETIRING AGE OF 65 I HAVE BEEN RETIRED FOR PHYSICAL AND OR MENTAL IMPAIRMENT BUT SO FAR I HAVE BEEN DENIED SOCIAL SECURITY DISABILITY BENEFITS WHICH IS NEEDED TO CARE FOR MY FIRST EX-WIFE AND SON AND NOW MY SECOND WIFE AND TWO SONS BECAUSE I AM UNABLE TO SUSTAIN GAINFUL ACTIVITY BASED ON MY PAST MENTAL AND PHYSICAL HISTORY I HAVE TRIED TO GET A JOB WITH MY MEDICAL HISTORY AND IN FILING MY APPLICATION FOR EMPLOYMENT IT HAS BEEN FOUND TO BE UNFEASIBLE TO BE EMPLOYED GAINFULLY BEING 50 YEARS OF AGE AND BLACK AND HAVING ANATOMICAL IMPAIRMENTS SUCH AS AN ENLARGED LIVER (CIRRHOSIS) ALSO AN ENLARGED SPLEEN AND A DOCUMENTARY ABNORMAL HEART AND HYPERTENSION WITH HARDENING OF THE ARTERIES PLUS I AM SUPPOSED TO BE PARANOID BECAUSE OF MY STRONG BELIEF ON THE PROBLEMS OF RACISM AND BIAS AND THE LACK OF LIBERTY AND JUSTICE FOR ALL AMERICANS THAT EXIST IN THIS COUNTRY? AS IF IT DOESN'T EXIST ONLY IN MY MIND I HAVE BEEN OFFERED BY THE N.E.W. TO GO TO THE WELFARE ON SOCIAL SERVICE THE WELFARE IN TURN WILL RECOMMEND ME FOR S.S.I. WHICH IS A FORM OF WELFARE BEING ADMINISTERED UNDER THE SOCIAL SECURITY WHICH DEPRIVES ME OF ANY FINANCIAL HOLDINGS I MAY HAVE MAY I GIVE ACUTE CASE AND POINT OUR RECENT ELECTED PRESIDENT NOW PAST PRESIDENT WENT THROUGH A TRAUMATIC EXPERIENCE WHILE IN OFFICE OR ON THE JOB THROUGH HIS OWN DOINGS BUT YET HE WAS AFFORDED A PENSION HIS TRAUMATIC EXPERIENCE EFFECTED HIM MENTALLY AND THEREBY BRINGING ON A PHYSICAL CONDITION AND MEDICAL AUTHORITIES RELATED HIS CONDITION TO HIS TRAUMAS WHILE IN OFFICE AND FINALLY HIS DOWNFALL RESULTING IN HIS RESIGNATION I WENT THROUGH CHANGES SEPTEMBER 1971 BECAUSE OF MY CONDITION I WAS RETIRED AND YET I CANNOT RECEIVE DISABILITY COMPENSATION YOUR HONOR THANK YOU  
ANDREW W DASH 959 KENT AVE BROOKLYN NY 11205

12159 EST

MGMNY:1 HSB

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x  
ANDREW W. DASH,

Plaintiff,

- against -

SECRETARY of the DEPARTMENT of  
HEALTH, EDUCATION and WELFARE,

Defendant.  
----- x

74-C-477  
75-7252  
MEMORANDUM  
and  
ORDER

Appearances:

ANDREW W. DASH, Plaintiff pro se

PROSPER K. PARKERTON, Esq.  
(DAVID G. TRAGER, Esq. United States Attorney,  
of Counsel).  
For the Defendant

DOOLING, D. J.

Plaintiff sues under 42 U.S.C. 405(g) for a review,  
and, upon such review, for a reversal of the Secretary's  
decision that the plaintiff is not entitled to an establish-  
ment of a period of disability and to disability insurance  
benefits under ~~38 U.S.C.~~ 42 U.S.C. 416(i), 423, of the  
Social Security Act, as amended.

Plaintiff, born "September 10, 1929," filed his  
application for disability insurance benefits on August 30,



1971 claiming that he became unable to work because of disability on October 12, 1970. However, plaintiff apparently was in military service from September of 1942 until December of 1945, and in his application for insurance benefits he stated that he had worked for the Pennsylvania Railroad (both before and after military service) from June of 1939 to about August of 1948. It is apparent from these dates that plaintiff could not very well have been born as late as 1929; evidently he was born in 1924, and that was his explicit testimony at the hearing. It is the only date compatible with his having been in the military service and with his work with the Pennsylvania Railroad.

A close reading of the record compels the conclusion that the decision of the Secretary must be affirmed. The decision of the Administrative Law Judge is full, exact, careful and eminently fair. While the plaintiff has indeed had a complicated medical history, while he has an enlarged liver which, however, has been completely asymptomatic for any pathology, and while he certainly has had personality problems that border on disorder and has had a history of



psychiatric treatment and of some neurosis, the record is eloquent of his complete competency to deal with the rather complex situation in which he found himself. There is no fair ground on which the Administrative Law Judge or the Secretary could have found that he was disabled within the meaning of the statute.

That is not to say that the problems which the plaintiff faces in his life situation are not real and difficult. He is an intelligent, articulate and determined black man, and his steady insistence on being treated as a man on his merits and without reference to his color (as a plus or as a minus factor) has led him into all kinds of conflict and difficulty, perhaps best typified by his explanation of the perhaps climactic incident that led to his separation from the Fire Department of the City of New York on medical retirement at the insistence of the Department -- not at his own insistence. See the transcript of the hearing (R. 72-76).

At another point (R. 54), speaking of his military service (when he was in his late teens or early twenties), he recalled,

"In the service they gave me the typical usual job they give most black people. They put me in a -- which I resented for a while -- they put me into a noncombatant unit. They put me into a segregated unit and they put me into a damn cook's job. Excuse my french . . . From the time I was there till the time I got out, I was a cook, I was a first sergeant, I was a supply sergeant. I had become a sergeant, doing all these types of chores that they counted on me to do."

And describing his experience with the railroad after he came out of the service and was working as a baggage handler:

(not as a porter) he testified (R. 56):

"And then as I gained seniority, I was in a position to bid on other jobs . . . . But they didn't have any blacks in a supervisory capacity, so therefore that was out . . . . I pulled sacks of mail. Handled baggage inside the baggage cars."

An insight into his more general position is given by the following (R. 84):

" . . . I'm going to have to shock you now. I'm giving you my history. I've worked all my life, but I am not going back to be what I tried to better myself in being, a dishwasher, a porter, or a shoeshine boy. If I was a broadcaster on a radio station and I lost my voice, you sure wouldn't expect me to go back and be a shoeshine boy."

(Transcript corrected to obvious sense of the words used).



" . . . I'm using this as an example and therefore I am not going to go and do any type of work that I feel emotionally is beneath me."

Some part of the plaintiff's attitude is evident from the following (R. 105-106):

"Well, something seems to be wrong because I know people who are getting disability just -- while working getting disability or who are working, getting disability, or who have gone to rehabilitation and work and also collect money. And I could give you the names and addresses of several people -- however, they're not black. And this is why -- this is the message in my heart, if you may ask. And I notice on that folder there. On that thing there, with my Social Security number, I should have just been a number, not a race, and that thing there says I'm a Negro."

Finally, the plaintiff put it most sharply in saying (R. 109):

"You're already physically handicapped, just being other than white in this country. So just let's call the ball game in the right ball park."

It is, of course, neither possible nor proper to determine in this case whether or not the plaintiff is right in his estimate of his own experience. What is determinative in the present case is simply that substantial evidence supported, indeed required, the Secretary's determination that plaintiff was not under a disability as a result of

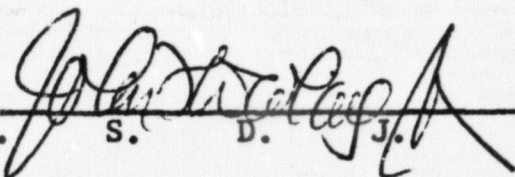


physical or mental impairment of such severity that it rendered him unable to do either his previous work or any other kind of substantial gainful work which exists in the national economy, considering his age, education, and work experience.

It is accordingly

ORDERED that the defendant's motion for judgment is granted and the Clerk is directed to enter judgment that the decision of the Secretary that plaintiff is not entitled to the establishment of a period of disability and disability insurance benefits under 42 U.S.C. 416(i) and 423 is affirmed.

Brooklyn, New York  
March 12, 1975.

  
U. S. D. J.